

Exhibit C

11/28/2018

King-Devick Test, Inc., v. NYU Langone Hospitals, et al.

Darrell G. Schlangen

Page 1

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Video-recorded deposition of DARRELL G. SCHLANGE, O.D., taken at Illinois College of Optometry, 3241 South Michigan Avenue, Chicago, Illinois, before Donna M. Kazaitis, IL-CSR, RPR, and CRR, commencing at the hour of 1:54 p.m. on Wednesday, November 28, 2018.

DIGITAL EVIDENCE GROUP
1730 M Street, NW, Suite 812
Washington, D.C. 20036
(202) 232-0646

11/28/2018

King-Devick Test, Inc., v. NYU Langone Hospitals, et al.

Darrell G. Schlange

<p>1 MR. KLUFT: I'm sorry. I don't mean 2 to interrupt you. Just for the record and for me, 3 Exhibit 1 is the whole packet of new stuff?</p> <p>4 MS. McCALLION: I think so.</p> <p>5 MR. KLUFT: Okay, fair enough.</p> <p>6 MS. McCALLION: That seemed to be the 7 best way to go there.</p> <p>8 MR. KLUFT: As long as the reporter 9 has a copy in the right order because mine is no 10 longer in the right order.</p> <p>11 MS. McCALLION: Yeah, we've got that. 12 Mine's in the order too.</p> <p>13 BY MS. McCALLION:</p> <p>14 Q. Okay. What you have in front of you, 15 Exhibit 3, Professor, have you seen this before? 16 This is your subpoena to testify here. (Document 17 tendered to the witness.)</p> <p>18 A. I think this is one that I got 10 days 19 ago or so.</p> <p>20 Q. I just wanted to make sure that you 21 had seen them before.</p> <p>22 A. Yes.</p>	<p>1 A. Yes. 2 Q. He was in your class. 3 A. Yes. 4 Q. Do you recall what class you taught to 5 him? 6 A. It would have been some of the, 7 probably the ocular anatomy course. 8 Q. Ocular anatomy. 9 A. Possibly, in his first year or first 10 couple of years. And then after that it would 11 have been maybe into vision therapy, vision care 12 for children that were on that list of courses 13 that was in one of those documents. 14 Q. So you may have taught him three 15 classes? 16 A. Probably, plus clinic. 17 Q. Plus a clinic. 18 A. Uh-huh. I don't remember the first 19 time I met him, but I remember other times. 20 Q. All right. When Mr. Devick was a 21 senior, he worked on a senior project -- 22 A. Uh-huh.</p>
<p>Page 38</p> <p>1 Q. This is what gets you here in the room 2 today. 3 A. I thought the first one got me in the 4 room. 5 Q. The first one had you search for 6 documents. Second one got you in the room. 7 A. I see. 8 Q. So obviously you know Mr. Devick. 9 A. Uh-huh. 10 Q. He was a student of yours; right? 11 A. Right. 12 Q. Do you recall when he was your 13 student? 14 A. Yes. 15 Q. And when was that? 16 A. He graduated I think in '76 in that 17 time period. So would have known him in the mid 18 '70s. 19 Q. Mid '70s. Do you recall when you 20 first met him? 21 A. No. 22 Q. But he was a student of yours.</p>	<p>1 Q. -- for you; is that right? 2 MR. KLUFT: Object to the form. 3 BY MS. McCALLION: 4 Q. You can answer if you understand. If 5 you don't understand, just ask me to rephrase it 6 or clarify it. 7 A. Clarify. 8 Q. So there came a time where Mr. Devick 9 was in your class -- 10 A. Uh-huh. 11 Q. -- right? As a senior? 12 A. Uh-huh. 13 Q. And he worked on a senior project. 14 A. Yes. 15 Q. Just remember to say "Yes" or "No." 16 A. Yes. 17 Q. Okay. Do you recall what the senior 18 project was? 19 A. It was the beginning of the 20 development of the King-Devick Test. 21 Q. And you -- 22 A. The official title was the proposed</p>

Page 39

Page 41

Pages 38 to 41

11/28/2018

King-Devick Test, Inc., v. NYU Langone Hospitals, et al.

Darrell G. Schlange

<p>1 King-Devick saccade test and its relation to the 2 Pierce saccade test and reading levels. 3 Q. So we might as well just introduce 4 that as an exhibit. I see that you've got a copy 5 in front of you. 6 A. Oh, I assumed everybody had a copy of 7 that. 8 (Deposition Exhibit 4 was marked 9 for identification.) 10 BY MS. McCALLION: 11 Q. So that's Exhibit 4. (Document 12 tendered to the witness.) 13 Do you recall Mr. Alan King being 14 your student as well? 15 A. Yes. 16 Q. Do you recall the class that they were 17 in while they were working on this project? 18 MR. KLUFT: Object to the form, vague. 19 You can answer. 20 Just for the witness' sake, if a 21 lawyer has a technical issue with the way the 22 question was asked --</p>	<p>1 Q. Okay. Do you remember Mr. King being 2 your student? 3 A. Yes. 4 Q. Do you remember Mr. Devick and 5 Mr. King working together on this paper? 6 A. Yes. 7 Q. Do you remember whether they were in a 8 class together while working on this paper that 9 you taught? 10 A. I believe they were in the same grade, 11 so they obviously were -- 12 Q. In the same class. 13 A. -- same class. 14 Q. Okay. 15 A. So they were fellow students and in 16 the same class and there was a lot of discussion 17 about the development of that. 18 Alan King was one of my TAs in the 19 ocular anatomy lab at that time. In the lab at 20 that time we had -- it was in this building or the 21 one next-door to us -- that had these long labs 22 and at the end of it, you know, we had kind of a</p>
<p style="text-align: center;">Page 42</p> <p>1 THE WITNESS: I see. 2 MR. KLUFT: -- a lawyer like me might 3 object to the form. It doesn't mean -- 4 THE WITNESS: I understand. 5 MR. KLUFT: -- the other attorney has 6 done anything wrong. 7 THE WITNESS: Sure. 8 MR. KLUFT: And it doesn't mean you 9 don't answer the question. 10 THE WITNESS: Okay. 11 MR. KLUFT: I just wanted to be clear 12 in case you were thinking I'm being rude. I'm not 13 attempting to be. 14 MS. McCALLION: He's very rude. 15 BY MS. McCALLION: 16 Q. All right. So let's just backtrack. 17 So this paper here that you have in 18 front of you, the proposed King-Devick saccade 19 test, right, and its relation to the Pierce 20 saccade test and reading levels. This is familiar 21 to you. 22 A. Indeed, very much.</p>	<p>1 prep room which often became like an office room. 2 So I was the instructor and we had 3 an assistant, another instructor, who I think was 4 Gary Porter, and then we had TA to help with the 5 lab, set it up, help answer student questions, and 6 that was Alan King. 7 Q. I see. 8 A. And so the prep room could be used to 9 set up labs but also like an office. And so it -- 10 obviously in 50 years I've done a couple hundred 11 of these different kinds of student projects and 12 so forth but this one is quite vivid in my memory. 13 Q. Why is that? 14 A. Because it was a situation where when 15 lab wasn't going, we spent a lot of time talking. 16 Other students would come in, and Steve Devick was 17 one of those. It was a situation, they were in 18 their last year and they were in clinic, and it 19 was a situation where we would talk about cases 20 that they had just seen. 21 For example, I mentioned this 22 before, I had this patient today, you know, and</p>

Page 43

Page 45

Pages 42 to 45

11/28/2018

King-Devick Test, Inc., v. NYU Langone Hospitals, et al.

Darrell G. Schlange

1 everything checked out okay but the teacher says
 2 there's something wrong, something's going on,
 3 this child is not reading where the child should
 4 be, several grade levels below.

5 So we talked about that case. And
 6 it might have been three, four, maybe five other
 7 students that would come in. A lot of
 8 camaraderie.

9 So we would discuss, okay, what are
 10 some possibilities that we could do with this
 11 patient that maybe could help solve the dilemma of
 12 the teacher that sent them here knowing that there
 13 is a visual problem but when we do the typical
 14 exam nothing shows up, maybe we need to do
 15 something different.

16 So we explored different
 17 possibilities. At that time the Pierce test was
 18 there. So we would say well, let's try that.

19 Well, the patient didn't do very
 20 good, let's try something else. And then another
 21 student would say, you know, one of the issues
 22 with the Pierce test is that the test cards, they

1 THE VIDEOGRAPHER: We are now going
 2 back on the record at 2:51 p.m.

3 THE WITNESS: Okay. Looking at
 4 Exhibit 5 --

5 BY MS. McCALLION:

6 Q. Right, yes.
 7 A. -- again, this is the orientation card
 8 or the introductory card just to make sure that
 9 they get the concept of eye movements and how to
 10 follow and read the numbers.

11 Q. And this is the Pierce test; right?

12 A. This is the Pierce.

13 Q. Did you teach this in your lab in
 14 1976?

15 A. More in clinic.

16 Q. In the clinic, in the clinic, okay.

17 A. So in looking at this, discussion
 18 would come about. And concurrent with this in
 19 society, particularly in the Chicago area, where
 20 organizations, advocates for helping children with
 21 learning disabilities, that was kind of the advent
 22 of some of those movements of organizations that

Page 46

Page 48

1 require a large movement of the eye, not typical
 2 like what you might find with, not typical like
 3 what you might find with normal reading. So the
 4 question was maybe we need to look at this another
 5 way and possibly explore other alternatives.

6 So in looking at the Pierce test --
 7 and I'm sure that you've looked at that --

8 Q. Is that a copy of the Pierce test
 9 right there?

10 A. Yes, uh-huh.

11 MR. KLUFT: Can we go off the record
 12 for a second?

13 THE WITNESS: I think this is in the
 14 countersuit, the document.

15 MS. McCALLION: Yes, yes. We know
 16 about that.

17 Let's just go off the record.

18 THE VIDEOGRAPHER: We are going off
 19 the record at 2:43 p.m.

20 (A recess was taken.)

21 (Deposition Exhibit 5 was marked
 22 for identification.)

1 really work on giving children with learning
 2 difficulties some special attention at school.
 3 Prior to that they were kind of left alone, unless
 4 they went to a private school.

5 So we got a lot of these referrals
 6 because teachers -- we had a reputation that we
 7 could sort out some of these visual things. And
 8 these children that teachers were concerned about
 9 because they just weren't performing, they were
 10 great on the football field or soccer -- soccer
 11 wasn't so much then -- but there were good at
 12 athletics they just couldn't read; they were
 13 pretty good in math but they just couldn't read.

14 So at that time we had the Pierce
 15 test, which, again, they had to read these from
 16 left to right and so forth, and so they were like
 17 15 down.

18 So then you would get into the Card
 19 2 and 3 which became increasingly difficult
 20 because in this one here you had the lines to help
 21 guide the eye as you went from left to right. And
 22 here the lines were missing, so now you had to

Page 47

Page 49

Pages 46 to 49

11/28/2018

King-Devick Test, Inc., v. NYU Langone Hospitals, et al.

Darrell G. Schlange

<p>1 have good, what we call saccades and fixation 2 ability. And here everything compresses closer 3 together. So it makes it even more difficult in 4 Card 3.</p> <p>5 So in our discussion we had, you 6 know, those children would often do very poorly on 7 this. So the question was, you know, they made a 8 tremendous number of mistakes in going from here 9 to there. And with eye movement and recordings we 10 know today that that's a real tough task for a 11 beginning reader with an immature visual system to 12 make that large movement from eight inches or so.</p> <p>13 So a lot of the kids have issues 14 with that, and that's why when they're reading a 15 regular book they kind of go to the end of one 16 line and get lost or skip lines or words and so 17 on.</p> <p>18 So in our discussion it became, you 19 know, maybe we need to do something a little 20 differently where it's more like not eight inches 21 saccade eye movement, but something that resembles 22 a little bit more reading, the actual reading,</p>	<p>1 different. 2 So the thought was, hey, let's try 3 something different. So would mock up something 4 like this and then try it on a patient. The kid 5 seemed to do better. You know, we don't have any 6 norms, no set instructions, but it was that 7 process of enlightenment from the student side as 8 well as hey, you know, maybe this will work. 9 So Alan King and Devick, or King 10 and Devick, kind of wanted to take this on as a 11 project. 12 Q. Right. 13 A. Okay. We saw the problems with what 14 we had. We saw the patients that had these 15 problems that were hard to diagnose or to identify 16 as to what's wrong. And we found that, you 17 know -- because on these second and third cards 18 they just couldn't do it as well. 19 So we found that there seemed to be 20 some benefit in making these numbers on the 21 King-Devick here more random-like but not just 22 left-right, left-right, but make it more like a</p>
<p style="text-align: center;">Page 50</p> <p>1 which we know involves these little eye movements 2 that go across the page and so began to play 3 around with that idea.</p> <p>4 Again, this was a very, from an 5 instructor, this is a very positive kind of an 6 interaction. I'm sure you had it in law school 7 where you had certain professors that things 8 clicked, or if you taught, that you had certain 9 students where you get the sense that, yeah, they 10 get it. You know, you can see the mind going 11 into, yeah, this is the problem and these are 12 options, and you can just see the whole discerning 13 process underway.</p> <p>14 So with the different students in 15 that office area in the back of the lab, we 16 explored a lot of different things. There were 17 obviously with five or six students other points 18 of discussion, but these were very refreshing to 19 me. And it was like, you know, you just observe 20 this and you kind of help them along but you see 21 that they're starting to come up with something 22 creative and something new and something</p>	<p style="text-align: center;">Page 52</p> <p>1 reading situation. 2 So here we had these eight 3 different lines and five on each. So here you had 4 40 different numbers that they had to read. So it 5 kind of clicked with them and here you had 30, you 6 know, 15 and 15. 7 So you had more stimuli that the 8 patient had to read more numbers. So you had a 9 larger sampling of their reading ability. And 10 they started to kind of play around with the 11 format of this and try it on their patients. 12 So at this point it was just, you 13 know, hey, this is an idea I have and the back and 14 forth of discussion, it was very rich. 15 Q. So did you work with King and/or 16 Devick to create the King-Devick Test? 17 A. I would say that, you know, in this 18 case in the format of students interacting on 19 cases they've seen, the discussion really started 20 with them, you know. 21 Q. With them. 22 A. With them and their patients. So they</p>

Page 51

Page 53

Pages 50 to 53

11/28/2018

King-Devick Test, Inc., v. NYU Langone Hospitals, et al.

Darrell G. Schlange

<p>1 came up with some of these ideas and looking at 2 what are the options available at that time. This 3 was pretty much it or just doing, you know, taking 4 a pencil and seeing how the patient does that 5 movement.</p> <p>6 So a lot of the creativity really 7 was generated at their level. We would have some 8 discussions and maybe modify it and so on. But a 9 lot of the basic concepts, the creativity, you 10 know, we bounced these ideas around among each 11 other and I would say as a mentoring on my part it 12 was more to keep them focused on it and to, you 13 know, work out a plan as to how we could really 14 test this out.</p> <p>15 Q. So is it fair to say that the 16 King-Devick Test is based on the Pierce test?</p> <p>17 A. In terms of a major -- that was one of 18 the major problems that the Pierce test had is 19 that it had these large saccades.</p> <p>20 A second problem was that the score 21 that you got at the end had just a mean, an 22 average score, and there were no standard</p>	<p>1 complete that as well as a separate set of data, 2 the errors.</p> <p>3 So it was generated by patients 4 that we had, a lot of discussion we had, ideas 5 that floated around, and looking at some of the 6 problems with the Pierce in its construction and 7 in its evaluation of the data and how do you 8 relate that to patient care.</p> <p>9 That was a huge problem. The 10 concept of, you know, let's have something that we 11 can get a number on, a score on, not just look at 12 the eyes, but something we can get a score on, but 13 it fell short in those two major areas.</p> <p>14 So the development of the 15 King-Devick worked around those and tried to 16 accommodate those errors by changing the pattern 17 of the saccades and the number of, what constitute 18 a failing and a passing score, determining 19 standard deviations on those different scores for 20 kids at different age levels.</p> <p>21 In their study they also went back 22 to do that for Pierce using Pierce's data to come</p>
Page 54	Page 56

11/28/2018

King-Devick Test, Inc., v. NYU Langone Hospitals, et al.

Darrell G. Schlange

<p>1 numbers on the bottom right. Do you see those? 2 The number I'm looking at is 298340. 3 MR. PERKINS: These little numbers 4 right here, 340. 5 THE WITNESS: Yes, okay. 6 BY MS. McCALLION: 7 Q. So I'm just looking at the spacing of 8 the numbers on this test card. 9 A. Uh-huh. 10 Q. Right? You have this in front of you, 11 the 298340? 12 A. Yeah. 13 Q. Did you work with Mr. Devick and 14 Mr. King -- 15 A. Uh-huh. 16 Q. -- on designing this particular card? 17 A. Yeah, there were several different 18 editions to that, as I recall. Eventually the key 19 thing was to be random but the numbers close 20 enough to where it would simulate typical reading 21 ability, reading eye movements. 22 So we had different editions that</p>	<p>1 also teaching something called the Vinset Test? 2 A. No. I mean it was there. It used 3 letters, I think, instead of numbers. The 4 clinical situation we were dealing with is those 5 that often were referred in for academic issues, 6 and these might be first grader, second. And it 7 was a real issue because they didn't want to read, 8 you know, you get the whole, the whole global 9 thing of, you know, a child begins to have 10 behavioral issues if they can't function in a 11 classroom. 12 So many of those kids had poor 13 recognition skills. So letters, even though it 14 seems simple, were difficult. And there's a thing 15 called visual verbal processing and it's a 16 perceptual motor kind of a thing. When the child 17 looks at it, they have to interpret and then they 18 have to verbalize it, and that whole process, 19 visual-verbal, is delayed in children that have 20 these learning related problems. 21 So that was more difficult for them 22 when there were letters instead of numbers.</p>
<p style="text-align: center;">Page 58</p> <p>1 they would come up with and maybe try it on a 2 patient, just kind of like testing it out in a 3 preliminary way to see, you know, how does this 4 work. 5 Q. Okay. 6 A. Yeah, that was kind of try something, 7 what's our impression, let's modify it, and it was 8 that kind of a process. 9 Q. So the spacing there serves an 10 important function; right? 11 A. Yes. 12 Q. And it's because it better measures 13 how people read? 14 A. The eye movements involved are closer 15 to what reading eye movements are. More so than 16 the example of where it's eight inches, 17 left-right, left-right. 18 So in that respect it was 19 constructed to be more similar to reading eye 20 movements as we would measure. 21 Q. And do you recall around the same time 22 when you were working with Mr. King and Devick</p>	<p>1 Numbers were easier for them to understand. 2 So that's why that test was 3 available, but we didn't really focus much on it. 4 Q. Do you remember teaching anything 5 called the Gilbert Test? 6 A. I was not familiar with the Gilbert 7 Test until a couple of the papers that came out 8 after the New York study was done that made 9 reference to the Gilbert Test. But we did not 10 discuss the Gilbert at that time. 11 Q. Do you remember the year of the 12 New York study you just referred to? 13 A. I think it was, the paper was '83 14 possibly, something like that. Somewhere in my 15 piles here I have the date of that. I was at that 16 point, the Gilbert was not in any academic 17 importance to us. 18 Q. Okay. 19 A. Just on that point. Since going back 20 to the Gilbert Test, after hearing about it and 21 knowing that it is mentioned in the subpoena -- 22 did I teach it? It's quite dramatic what was</p>

Page 59

Page 61

Pages 58 to 61

11/28/2018

King-Devick Test, Inc., v. NYU Langone Hospitals, et al.

Darrell G. Schlange

<p>1 and Mr. Devick handed you the final senior paper. 2 A. Uh-huh. 3 Q. And that's what we have in front of 4 us, I believe. 5 A. Sure. 6 Q. Do you remember your impression of it 7 at the time? 8 A. The whole idea of the project was very 9 excellent and positive and, you know, brought 10 something new to the profession that we didn't 11 have before. 12 Q. Do you remember what grade you gave 13 them? 14 A. I don't. I hear that it was a B. 15 I've heard that for years. 16 Q. You don't remember. 17 A. I know it was a recognized paper. You 18 know, having taught for many years and having this 19 experience where, you know, maybe the student 20 doesn't feel they got the grade they deserved or 21 whatever, and, you know, years later we'll see 22 them at a meeting and we'll laugh about it and</p>	<p>1 One was thoroughness of research; 2 efficiency and ability to meet deadlines; 3, 3 ability to work independently; 4, quality and 4 organization of writing; 5, grammar, spelling, 5 punctuation, follow the syllabus guidelines; and 6 completeness of referencing. 7 Just looking at, you know, not to 8 make any judgments at this point, but there were 9 more references that we did look at at that time 10 than what are listed here in the final document. 11 Q. Do you recall what those references 12 were? 13 A. Well, some of the work of like Helen 14 Robinson, people like that. 15 Q. So Helen Robinson -- 16 A. You know, other people, even Pierce. 17 So I don't want -- I'm not certain that it was a 18 B. I have always viewed this as an excellent 19 paper. We don't just look at the outcome of the 20 study and what all the work is involved, these 21 other parameters involved. But the word is that I 22 gave them a B. I do not recall that.</p>
<p>Page 74</p> <p>1 maybe go have a drink and it's history. 2 This, you know, I never imagined -- 3 I know that this has been mentioned numerous times 4 that it was a B. And, again, I have no record 5 that it was a B, but it has been an issue and I 6 never imagined that I would have to discuss this 7 in a subpoena in federal court. 8 Q. I can imagine. 9 A. I do want to mention that it isn't 10 just one criteria. A basic purpose of this course 11 is to help the student understand the scientific 12 method so they're better able to discern what's a 13 good study, what's bad, for the benefit of their 14 patients. Not that they're going to do research 15 in their practice, their clinical practice, but 16 that they know what to look for, what's good 17 publication, what's good research, what isn't. 18 At that time I know we had the same 19 criteria. Today we have criteria, because today 20 our students still do this, today we use six 21 points. I think there might have been five at 22 that point.</p>	<p>1 Q. Okay. Well, we'll -- 2 A. It wasn't just based on one factor. 3 It was based on other things because, again, we 4 wanted them a learning experience in the whole 5 field of doing research and putting it together 6 for a publication. 7 Q. You said a little bit earlier that 8 this paper, their senior paper, was a recognized 9 paper. What do you mean by that? 10 A. What I mean by that is that even 11 though at that time it was kind of at meetings 12 would be spread by kind of word of mouth and, you 13 know, at some meetings it might be focused on 14 child care, reading and vision, you know. It used 15 to start to come forth that hey, you know, those 16 guys had an interesting idea. 17 So at that point it was basically 18 at meetings, check this out, you know, and people 19 would check it out and like it. 20 Q. Were these meetings before they handed 21 in the final paper to you? 22 A. No.</p>

Page 75

Page 77

Pages 74 to 77

11/28/2018

King-Devick Test, Inc., v. NYU Langone Hospitals, et al.

Darrell G. Schlange

<p>1 Q. Okay. It was meetings after they had 2 handed in the final paper. 3 A. Yeah. 4 Q. Do you know how people learned of it? 5 A. A lot that, and when it was done, 6 included in the battery of tests that New York 7 did. 8 Q. When was that? 9 A. I think that was in the early '80s. 10 Q. Okay. So just going back to when 11 Mr. King and Mr. Devick handed you this paper, was 12 there a policy at the time at the school to give 13 senior papers to the library? 14 MR. KLUFT: Objection, foundation. 15 BY MS. McCALLION: 16 Q. You can answer. 17 A. We would do that with all of them. 18 Q. You did that with all of them. 19 A. They were put in a special place, 20 special cabinet. I tried to keep copies of any of 21 those that I was involved with. But they were 22 kept in the library. Most of them just collected</p>	<p>1 the original King-Devick was like and just kind of 2 tweak it around a little bit. 3 So it was like for an internal 4 thing that students, maybe some faculty would go 5 in and sort that out. But the way it spread 6 outside of the institution was more by at a 7 meeting and just, you know, word of mouth. 8 Q. Okay. So do you recall having a copy 9 of their senior paper and physically giving it to 10 the library? 11 A. I don't know how that happened. I 12 just know that the library somehow ended up 13 getting copies of all the papers. 14 Q. Do you know when the library first got 15 the copy of the King-Devick paper? 16 A. I don't. I assume shortly after it 17 was done. 18 Q. In 1976. 19 A. Yeah. 20 Q. Did you retain a copy of their final 21 paper? 22 A. I did.</p>
<p>Page 78</p> <p>1 dust. And when the college went through 2 remodeling, they had to eliminate those. 3 Q. Right, we heard about that. 4 A. So many of them were returned to the 5 original author, the student author. 6 Q. So was it a policy at the time to give 7 the student papers to the library? 8 MR. KLUFT: Objection, foundation. 9 THE WITNESS: No, I don't think it was 10 a formal policy. I think, you know, at that time 11 when maybe -- you know, today that might 12 immediately thereafter lead to a publication. At 13 that time the students, they graduated, they left. 14 But some of the work was really good, including 15 this. 16 So we wanted this to be somewhere 17 that if another student, like the one that I 18 mentioned, Blashill, the one where we did the 19 modification -- 20 BY MS. McCALLION: 21 Q. Yes. 22 A. -- you know, he could go and see what</p>	<p>Page 80</p> <p>1 Q. Did you start to use that final paper 2 in your teachings in the lab here or in the clinic 3 or in your classes? 4 A. No. 5 Q. What did you do with it? 6 A. Well, we didn't -- at that time we 7 didn't start on a regular basis of using that in 8 the clinic. That came about a little later. As 9 it became more formalized, you know, with the test 10 plates and the like. 11 So to make those kinds of changes 12 in the curriculum and incorporate in the clinic, 13 you need something like this, you need something, 14 some sort of norms that you can quickly look at. 15 And that came but we didn't have that at first. 16 We had all the numbers and 17 everything, but to have this in the form in which 18 a clinician could say in short time, yeah, this 19 child failed, this child didn't, that was a 20 process of transitioning it into the profession. 21 Q. I see. 22 MR. KLUFT: Can I just state for the</p>

Page 79

Page 81

Pages 78 to 81

11/28/2018

King-Devick Test, Inc., v. NYU Langone Hospitals, et al.

Darrell G. Schlange

<p>1 for bringing that.</p> <p>2 (Deposition Exhibit 7 was marked</p> <p>3 for identification.)</p> <p>4 MS. McCALLION: And let's just mark as</p> <p>5 Exhibit 8.</p> <p>6 MR. PERKINS: There's two sets of</p> <p>7 those.</p> <p>8 MS. McCALLION: Yeah.</p> <p>9 MR. PERKINS: That was the stuff he</p> <p>10 was talking about Reading Plus and --</p> <p>11 MS. McCALLION: Taylor.</p> <p>12 MR. PERKINS: -- Taylor.</p> <p>13 (Deposition Exhibit 8 was marked</p> <p>14 for identification.)</p> <p>15 BY MS. McCALLION:</p> <p>16 Q. So Exhibit 8 references the testimony</p> <p>17 you gave prior to the break about Taylor and the</p> <p>18 Taylor test.</p> <p>19 MR. PERKINS: You got to have a verbal</p> <p>20 answer.</p> <p>21 THE WITNESS: Yes, specifically the</p> <p>22 eye movement recording system they had.</p>	<p>1 BY MS. McCALLION:</p> <p>2 Q. I thought you said that. I think you</p> <p>3 made a reference to New York. Maybe that's what</p> <p>4 it was.</p> <p>5 Are you familiar with the NYSOA?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. What is the NYSOA?</p> <p>8 A. In New York they developed or wanted</p> <p>9 to do a battery of tests for children in the</p> <p>10 New York public school system and they wanted to</p> <p>11 have a quick and effective way to look at eye</p> <p>12 movements.</p> <p>13 So they selected the King-Devick as</p> <p>14 the part of their battery to use. And they had</p> <p>15 other alternatives or other choices like the</p> <p>16 Pierce and some recording systems that were very</p> <p>17 cumbersome. But they included the King-Devick in</p> <p>18 their battery of tests for these large sample of</p> <p>19 public school children in New York City.</p> <p>20 Q. How do you know about this test, the</p> <p>21 NYSOA test?</p> <p>22 A. Well, they put their name on it after</p>
Page 86	Page 88

Pages 86 to 89

11/28/2018

King-Devick Test, Inc., v. NYU Langone Hospitals, et al.

Darrell G. Schlange

<p>1 A. No. That was part of the word of 2 mouth thing that was growing about this test, like 3 hey, you know, check this out, this is good. 4 Q. How do you know that? 5 A. Because I went to meetings and I know 6 this was the nature of a lot of communication. 7 Q. So what meetings are you referring to 8 there? 9 A. They could be -- at that time it would 10 be the Academy of Optometry, American Academy of 11 Optometry, American Optometric Association, it 12 would be the Optometric Extension Program, OEP. 13 At that time there were a lot of 14 local networking systems or groups that would 15 meet, for example, in Chicago every year and 16 basically speakers and participants were from this 17 metropolitan area. So a lot of the format of 18 those was not just lecture but a lot of time just 19 to mingle and say, you know, hey, this worked for 20 me, check it out. 21 Q. And when you said before meetings at 22 that time, are we talking about 1976, 1977?</p>	<p>1 A. No, just that -- you mean that it 2 would be sold there or something or what? 3 Q. No, they just had a copy. 4 A. Yeah, no, it just was, you know, hey, 5 look, we don't have a lot of options when it comes 6 to eye movements that's quick and effective, you 7 know, you got the elaborate stuff with the 8 recording systems and technology, but to actually 9 have something that would be a few minutes 10 screening test, that was new and very positive 11 reception of people. 12 Q. So if you could help me understand the 13 process. Mr. King and Mr. Devick were students, 14 they completed the senior project, they handed the 15 paper in to you. You graded it. We're not going 16 to go into that. And then at some point in time a 17 copy of that paper was given here to the library 18 at ICO? 19 MR. KLUFT: Objection. You can 20 answer. 21 THE WITNESS: It probably was just 22 within that year.</p>
<p>Page 90</p>	<p>Page 92</p>

Page 91 Page 93

Pages 90 to 93

11/28/2018

King-Devick Test, Inc., v. NYU Langone Hospitals, et al.

Darrell G. Schlange

<p>1 A. -- out of New York. 2 So they -- 3 Q. Hold on one second -- 4 A. Yeah. 5 Q. -- because we're also jumping around. 6 So this is a copy of the NYSOA 7 paper about the K-D Test. 8 A. Their study in New York City. 9 Q. Okay. 10 A. And the results. 11 MR. KLUFT: I'm sorry to interrupt, 12 Counsel, but could you ask him what the year is 13 just so we can further identify this for the 14 record. 15 BY MS. McCALLION: 16 Q. Well, I see 1983; right? 17 A. 1983. 18 Q. Okay. 19 A. Yeah. 20 Q. We can make a copy of this. I don't 21 really feel rushed to do that. So we can just let 22 that be.</p>	<p>1 people outside of ICO found out about the King and 2 Devick project shortly after it was handed in to 3 you as their senior paper? 4 A. I don't know. I would assume that 5 from my experience this paper was something more 6 tangible that the people could look at and say 7 this is what the test is. In my recollection we 8 talked about it but nobody said to me can you get 9 me a copy of it. 10 Q. So I'm not sure I understand what 11 you're saying. When you said this paper was 12 something more tangible that people could look at 13 and say this is what the test is. 14 A. It was a publication. 15 Q. What do you mean by that? 16 A. There's a publication right here, this 17 document here -- 18 Q. Right, right, right. 19 A. -- was a publication. 20 MR. KLUFT: The witness -- 21 THE WITNESS: So people could see that 22 publication.</p>
<p>Page 94</p> <p>1 But I think my question is a little 2 bit different because I see why you're giving this 3 to me. But let me backtrack and try and explain 4 what I'm asking. 5 When Mr. King and Mr. Devick handed 6 their paper in, that was in 1976; right? 7 A. (Witness nodding.) 8 Q. And so based on what I'm hearing you 9 say, people outside of ICO found out about the 10 paper around 1976 or 1977 or 1978. Do you agree? 11 A. In the format that I mentioned, yes. 12 Not from the lecture podium but more in just study 13 groups and case-based study groups where people 14 would get together or, you know, in a meeting they 15 would allow time for bring in cases and let's 16 discuss it. Kind of like the format that we would 17 often do here at the college with students. 18 Q. And so this point in time that we're 19 talking about now, late '70s, is well before NYSOA 20 published the paper, because that was in 1983. 21 A. Yeah. 22 Q. So do you have an understanding of how</p>	<p>Page 95</p> <p>Page 96</p> <p>1 BY MS. McCALLION: 2 Q. Right, okay. So we're, again, talking 3 about this NYSOA -- 4 A. Yeah. 5 Q. -- article published in 1983. 6 A. Yeah. 7 Q. Do you know when NYSOA started testing 8 the K-D Test? 9 A. No. I think it's probably in there 10 somewhere. Probably within the year before. I 11 don't know. 12 Q. A year before 1983? 13 MR. KLUFT: Objection. 14 THE WITNESS: I have no idea. 15 BY MS. McCALLION: 16 Q. Okay. 17 A. I'm sure it's in a document there 18 someplace. It just was published at that time. 19 And, you know, when the delay from when it was 20 submitted to published I'm not sure. 21 Q. The delay, are you referring to the 22 delay on NYSOA paper?</p>

Pages 94 to 97